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Report of the Office of Internal Oversight Services on the triennial review of the implementation of recommendations made by the Committee for Programme and Coordination at its forty-third session on the in-depth evaluation of the programme on the law of the sea and ocean affairs

Summary

The present report of the Office of Internal Oversight Services is submitted in accordance with the decision taken by the Committee for Programme and Coordination at its twenty-second session to review the implementation of its recommendations three years after taking decisions on an in-depth evaluation.

The present triennial review concludes that the Division for Ocean Affairs and the Law of the Sea has implemented all the recommendations of the in-depth evaluation of the programme on the law of the sea and ocean affairs endorsed by the Committee. An example of the Division's successful programmatic work and implementation of these recommendations is the fact that since the United Nations Convention on the Law of the Sea came into force on 16 November 1994, 149 States and the European Union have become parties to the Convention.

* E/AC.51/2006/1.

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Contents

		Paragraphs	Page
I.	Introduction	1–4	3
II.	Findings	5–45	3
III.	Conclusions	46–47	12

I. Introduction

1. At its forty-third session, in 2003, the Committee for Programme and Coordination considered the report of the Office of Internal Oversight Services (OIOS) on the in-depth evaluation of the programme on the law of the sea and ocean affairs (E/AC.51/2003/3). The Committee endorsed recommendations 1 to 7 contained in the report.

2. The present report of OIOS describes the extent to which those recommendations have been implemented. This review covers the implementation of the Division for Ocean Affairs and the Law of the Sea integrated programme on ocean affairs and the law of the sea, its coordination with and technical assistance to the General Assembly and other relevant intergovernmental bodies, and the annual reviews of implementation by the General Assembly.

3. Since its establishment in 1992, the Division for Ocean Affairs and the Law of the Sea has discharged effectively the responsibilities of the Secretary-General under the United Nations Convention on the Law of the Sea. In particular, administrative support provided by the Division to treaty institutions has been useful and cost-effective and its technical support for the Commission on the Limits of the Continental Shelf has facilitated the work of the Commission. Its servicing of the General Assembly and its Open-ended Informal Consultative Process on Oceans and the Law of the Sea during the annual review and evaluation of the implementation of the Convention and other developments relating to ocean affairs has satisfied the users of the services. The comprehensive annual report prepared by the Division plays a critical role in the General Assembly's annual review.

4. The present triennial review is based on (a) the information provided by the Division on progress made in implementing the recommendations of the Committee for Programme and Coordination, a process monitored twice a year by OIOS; (b) a review in September 2005 of documents obtained from the Division; and (c) consultations held early in 2006 with staff of the Division. A draft of the report was made available to the Division for review.

II. Findings

Recommendation 1
Consultations among secretariats of the treaty system of institutions

To better address issues of common interest, the secretariats of the treaty system of institutions should hold periodic informal consultations on substantive issues which affect utilization of their institutions or which may require their joint examination and further legal or scientific studies. The International Tribunal for the Law of the Sea will participate in these consultations, having due regard to its status as an international judicial body. For cost-effectiveness, these consultations can be held back to back with Meetings of States Parties.

5. The United Nations System Chief Executives Board for Coordination (CEB) endorsed the establishment of an inter-agency coordination mechanism on ocean and coastal issues within the United Nations system in 2003 (see CEB/2003/7). The

mechanism was named UN-Oceans,[1] and it operates as a flexible mechanism to review joint and overlapping ongoing activities and to support related deliberations of the Informal Consultative Process, coordinating as far as possible its meetings with those of the Informal Consultative Process. UN-Oceans also pursues time-bound initiatives, with well-defined terms of reference, through ad hoc task forces open to the participation of non-governmental organizations (NGOs) and other international stakeholders as required. These task forces, coordinated by a lead institution, foster collaboration around existing joint activities as well as newly emerging activities identified by UN-Oceans. OIOS observed that this mechanism effectively fulfils the need for periodic informal consultations.

6. In terms of the participation of the International Tribunal for the Law of the Sea as an independent judicial entity established by the Convention with a separate secretariat, the Division has a relationship agreement with the Tribunal and acts as liaison office.[2] The United Nations does not have the authority to advise the Tribunal regarding its collaboration with other organizations and agencies. The Tribunal is invited to attend the Informal Consultative Process.

7. As the Tribunal is located in Hamburg, Germany, the Division is frequently asked to arrange consultations with various Member States and other institutions when the President or the Registrar of the Tribunal comes to New York. OIOS noted that the Division has accommodated all such requests; an example cited was the assistance provided to the Tribunal in organizing a round table concerning the role of advisory opinions and the practice of judicial bodies, held in New York on 30 November 2005.

8. The Division is engaged in continuous consultations with the Tribunal on a weekly basis, regarding the handling of various documents produced by the United Nations at the request of the Tribunal. It should be noted that the Division does not have meetings with the Tribunal to discuss cases before it, since that would represent an intrusion on the authority of an independent judicial entity. In addition, the Division has prepared a digest of international judicial cases involving the law of the sea in collaboration with the Tribunal and the International Court of Justice. The publication was requested by Member States and civil society.

9. OIOS considers that this recommendation has been implemented.

Recommendation 2
Universal acceptance of the Convention and the Agreements

In promoting universal acceptance of the Convention and the Agreements:

(a) The Division should brief, upon request, government entities and legislative organs of countries engaged in the process of ratification of the Convention and/or the Agreements;

(b) To raise awareness among the national policymakers of the benefits of participation in the international legal regime for the oceans, the Division should disseminate information on the potential economic

[1] For additional information, see http://www.un-oceans.org/index.htm.

[2] A letter of understanding signed in the spring of 2003 entitles the Division to act as a liaison office for the Tribunal.

benefits and their contribution to socio-economic development, through case studies or prospective analysis.

10. The Division has provided briefings, upon request, to representatives of national Governments regarding the Convention and its implementation. Examples cited are a briefing in Morocco contributing to the deposit of the instrument of ratification by Morocco,[3] a briefing in New York to the members of the executive and legislative organs of the Dominican Republic,[4] a technical briefing to the members of a maritime boundary working group composed of representatives of various United States agencies and a general briefing on the issue of maritime spaces to representatives of Peru.

11. The Division conducts annual briefings for diplomats and other interested audiences in collaboration with the United Nations Institute for Training and Research (UNITAR) to familiarize them with the provisions of the Convention, the process of its ratification and the obligations of States parties. Due to budgetary limitations, the Division is not in a position to organize such briefings away from United Nations Headquarters, despite requests by some States, such as Indonesia, Malaysia, El Salvador and Peru, the last two being non-parties to the Convention requesting assistance in respect of the procedure for becoming parties.

12. The Division reports that the results of this partnership have been an increased understanding of law of the sea issues, and the positive feedback received after each joint briefing with UNITAR confirms this. Delegations reported that the briefings were very useful for their work in the field of the law of the sea, especially in view of the debates that are carried out during the General Assembly negotiations on the resolutions on oceans and law of the sea and on fisheries.

13. Furthermore, in collaboration with relevant regional organizations, the Division has organized workshops on the preparation of submissions to the Commission on the Limits of the Continental Shelf in accordance with article 76 of the Convention. The Division has also prepared a 600-page manual for the purposes of the workshop; the manual has been translated into French and is being translated into Spanish.

14. Three workshops were organized, in Fiji (28 February-4 March 2005), Sri Lanka (16-20 May 2005) and Ghana (5-9 December 2005). Altogether, more than 100 participants from more than 35 States attended the workshops. The Division is organizing the last regional workshop in Argentina (2006). Meanwhile, individual States have approached the Division with requests to organize subregional workshops, namely, Kenya, Namibia, Papua New Guinea, Senegal and Viet Nam.

15. In addition, the Division issued a publication entitled *The Law of the Sea: Obligations of States Parties under the United Nations Convention on the Law of the Sea and Complementary Instruments*, which should assist States in assessing their obligations upon ratification. The publication was prepared upon the request of States parties in 2003; delegates have expressed satisfaction with the content of the publication during the General Assembly debates in the subsequent years.

[3] Morocco initiated internal activities for accession to the Convention and has almost completed the process.

[4] The Dominican Republic has also initiated activities for accession and informed the Division that it may need further assistance.

Furthermore, the overall publishing programme of the Division is praised in General Assembly resolutions annually.

16. The publications of the Division that were planned at the time of the preparation of the 2004-2005 programme budget have been completed, with more planned for 2006. The number of prospective publications has been reduced because of the growing workload of the Division emanating from the annual General Assembly resolutions, which do not foresee an expansion of available resources.

17. OIOS notes that to increase the awareness of national policymakers regarding the benefits of participation in the international legal regime for the oceans, the Division consistently produces publications that emphasize this particular dimension. One such example is the publication on marine resources in the exclusive economic zone. The Global Marine Assessment initiative is also intended to raise the awareness of policymakers and includes a socio-economic analysis. Furthermore, the above-mentioned workshops on the limits of the continental shelf emphasized the economic benefits to be realized by participation in the international legal regime for the oceans.

18. OIOS considers that this recommendation has been implemented.

Recommendation 3
Regional cooperation

Considering the central role of regional cooperation to ensure consistent application of the Convention and implementation of integrated ocean management:

(a) **The Division should participate actively in the biennial meetings of regional seas conventions and action plans, and other relevant regional meetings;**

(b) **In collaboration with the competent international organizations, the Division should ensure that the implementation of regional or subregional initiatives is not hampered by lack of legal information or capacity to implement the international legal regime.**

19. The Division reported that it welcomes opportunities to take active part in relevant regional meetings and is frequently invited to participate in such meetings — for example, the meeting of the Ad Hoc Open-ended Working Group on Protected Areas of the Convention on Biological Diversity (CBD) (Montecatini, Italy 13-17 June 2005).

20. Other examples cited were the Global Marine Assessment (GMA) International Workshop (7-11 June 2004), where there was a general agreement on the need for further preparations for the establishment of GMA. One of the steps already identified in the preparation phase relates to the establishment of a task force. The Division provided secretariat services to GMA for 2004-2005; starting in 2006 such services will be provided by the United Nations Environment Programme (UNEP) and the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

21. However, OIOS noted that the zero budget growth approach for the biennium 2006-2007 and the resultant lack of resources prevent the Division from participating in all meetings where its involvement is required. Consequently, the

Division has been actively seeking extrabudgetary funds to attend meetings on a case-by-case basis. During the last year the Division received several invitations to attend meetings in New Zealand, Jamaica (International Seabed Authority) and China, among others, and has managed to accommodate roughly 50 per cent of requests for its participation.

22. With regard to recommendation 3 (b), the Division has made efforts to assist Member States and regional organizations in better understanding the application of the provisions of the United Nations Convention on the Law of the Sea and the Fish Stocks Agreement. Examples of this are the holding of the Caribbean Conference on Maritime Delimitation, a Mexican initiative to facilitate the peaceful delimitation of maritime zones in the Caribbean, and the provision of information and briefings explaining the relationship between the environmental provisions of the Convention, in particular article 211 of Part XII, and the International Maritime Organization (IMO) process for the designation of particularly sensitive sea areas (PSSAs). The question of the compatibility of PSSAs with the Convention had arisen both at IMO and in the Baltic Marine Environment Protection Commission (Helsinki Commission),[5] and the Division had submitted opinions on the subject to IMO. In addition, as a result of the Division's work with the Baltic organization, all the States concerned, with the exception of the Russian Federation, presented a proposal to IMO to designate an area of the Baltic Sea (except Russian waters) a PSSA. After examination, this proposal was accepted and the sea area concerned was designated a PSSA.

23. The Division also has a memorandum of understanding with UNEP/Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA). It established a course-development unit with a global mandate within the UNEP/GPA Coordination Office. The course-development unit, using the train-sea-coast methodology, has produced a training manual on improving wastewater management in coastal cities. The training course developed provides participants with information, tools and skills for selecting, planning and financing appropriate and environmentally sound municipal wastewater management systems. In March 2005, the Division initiated discussions with UNEP and the International Ocean Institute regarding the preparation of a new train-sea-coast project for the new financial cycle. The project is under consideration by the Global Environmental Fund, and the details are currently being worked out.

24. In addition, the annual integrated report of the Secretary-General on oceans and the law of the sea and other reports requested by the General Assembly and prepared by the Division in collaboration with other relevant organizations of the United Nations system and beyond represent a significant source of legal information for implementation of the international legal regime.

25. The Division collaborated with the Department of Economic and Social Affairs in seeking Associate Programme Officers from the Associate Experts Programme.[6] The provision of the associate experts would assist in the administration of two voluntary trust funds: one for the purpose of facilitating the preparation of submissions — terms of reference, guidelines and rules — and the other for the purpose of defraying the cost of participation for developing States that

[5] The Commission is the governing body of the Convention on the Protection of the Marine Environment of the Baltic Sea Area.

[6] Experts are funded by the Governments of Member States participating in the Programme.

are members of the Commission on the Limits of the Continental Shelf. The associate experts will also develop cooperation with both prospective applicant States and donor States to determine actual needs and goals with regard to the process of delineation of their extended continental shelf. However, the Division was informed by the Department of Economic and Social Affairs that no suitable experts for the posts could be found.

26. OIOS considers that the recommendation has been implemented.

Recommendation 4
Analysis of new developments

To enhance support for the General Assembly in its identification of priority areas in ocean affairs and necessary actions to be taken, the Division should further synthesize the information received from the competent organizations presented in its comprehensive annual report on oceans and the law of the sea. The annual report should include assessments of the overall impact of the efforts of the competent organizations and suggestions for future activities. This additional analysis should be prepared in collaboration with the different contributing organizations, in the context of the new inter-agency coordinating mechanism on oceans and coastal areas recommended by the General Assembly in its resolution 57/141 of 12 December 2002, with due regard for the expertise of those organizations and the responsibilities of their governing bodies.

27. The General Assembly identifies priority areas in ocean affairs in its two resolutions on oceans and fisheries matters each year. Those resolutions also identify activities to be undertaken by Member States, organizations concerned and the Secretary-General. An example of exercises undertaken in this regard was the meeting between representatives of the International Law Organization (ILO), the Food and Agriculture Organization of the United Nations (FAO), IMO and the Division at IMO headquarters in London, in July 2005, to examine the question of the "genuine link" between a ship and its flag State, as requested by the General Assembly in resolutions 58/14, 58/240, 59/24 and 59/25. The report of that inter-agency meeting is being submitted by IMO to its Council for approval at its session in June 2006 and will be forwarded by IMO, on behalf of the inter-agency group, to the General Assembly at its next session.

28. The next step in the preparations for GMA is the convening of a meeting of a group of experts. There was a GMA meeting of experts in 2005, the results of which were forwarded to the General Assembly at its sixtieth session, and the Assembly took action upon the group's recommendations. The Assembly decided to establish the GMA process and designated UNEP and IOC/UNESCO the lead agencies. The lead agencies approached the Division for assistance and invited it to participate as an integral element in the implementation of the General Assembly's decision.

29. In terms of synthesizing information received from the competent organizations, the Division continues to produce reports on various subjects, as requested by the General Assembly, through collaboration with competent organizations including IOC, the International Law Commission (ILC), UNEP, the United Nations Development Programme (UNDP), the Convention on Biological Diversity (CBD), the Department of Economic and Social Affairs and regional seas

and fisheries organizations and entities. Examples include the following special reports: the report on conservation and sustainable use of marine biological diversity (A/60/63/Add.1); "Report submitted in accordance with paragraph 17 of General Assembly resolution 59/25, to assist the Review Conference to implement its mandate under paragraph 2, article 36 of the United Nations Fish Stocks Agreement" (A/CONF.210/2006/1); "Regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects: Second International Workshop" (A/60/91); "A regular process for the global reporting and assessment of the state of the marine environment, including socio-economic aspects: Global Marine Assessment International Workshop" (A/59/126); "Consultative Group on Flag State Implementation" (A/59/63 and Corr.1); and "A regular process for the global reporting and assessment of the state of the marine environment: proposals on modalities" (A/58/423). Furthermore, in the preparation of the Secretary-General's annual report on ocean affairs, the Division continuously synthesizes and analyses information on oceans and law of the sea matters made available from various sources, including competent organizations and print, broadcast and electronic media.

30. In terms of collaborating with contributing organizations, in the context of the new inter-agency coordinating mechanism, the Division collaborates with IOC, ILC, the International Tribunal for the Law of the Sea, the International Seabed Authority, UNEP, UNDP, CBD, the Department of Economic and Social Affairs and regional seas and fisheries organizations and entities for the purposes of the preparation of the Secretary-General's reports to the General Assembly on the state of ocean affairs.

31. OIOS considers that this recommendation has been implemented.

Recommendation 5
Publications of the Division

To better target its publications and to increase their usefulness, the Division should assess the needs of its readership. It should also review its publications programme to ensure that it provides adequate coverage of topics and issues, as identified in its work plans, for which States require assistance. Where specific gaps are identified in the publications programme, the Division should update existing publications or develop new ones as necessary. Whenever relevant, this should be done in collaboration with the competent specialized agency to ensure that there is no duplication and to explore cost-sharing arrangements.

32. OIOS noted that the Division had attempted to conduct surveys in the past in order to elicit comments and suggestions for better planning its publications programme. However, the number of respondents was meager. A survey of Member States showed that they considered the current publications a valuable and unique source of information and unanimously expressed the view that the publications should continue to be produced.

33. The Division constantly reviews its publications programme and adjusts it in response to the comments made by Member States during the debate in the General Assembly, meetings of States parties and the Informal Consultative Process. The Division collaborates with IOC, ILC, the International Tribunal for the Law of the Sea, the International Seabed Authority, UNEP, UNDP, CBD, the Department of

Economic and Social Affairs and regional seas and fisheries organizations and entities for the preparation of publications.

34. The Division published a digest of international judicial cases involving the law of the sea, in collaboration with the International Tribunal for the Law of the Sea and the International Court of Justice. The publication is an attempt to bring all the judicial cases on the law of the sea together in one place and enable Member States, United Nations agencies and research and educational institutions to have easy access to them.

35. Other publications developed recently by the Division include *Marine Minerals Resources: Scientific Advances and Economic Perspectives* (ISBN 976-610-712-2); *The Law of the Sea: Obligations of States Parties under the United Nations Convention on the Law of the Sea and Complementary Instruments* (ISBN 92-1-133575-2); and *The Law of the Sea: A Select Bibliography, 2004*, regularly updated (ISBN 92-1-133732-1).

36. OIOS considers that this recommendation has been implemented.

Recommendation 6
Inter-agency coordinating mechanism

The new inter-agency coordinating mechanism on oceans and coastal areas, called for by the General Assembly in its resolution 57/141, should be task-oriented and involve representatives of all relevant United Nations agencies and programmes. Its coverage of issues should be as inclusive as the coverage of ocean affairs and the law of the sea by the General Assembly.

37. Only organizations of the United Nations system participate in the work of the UN-Oceans, which is a subsidiary mechanism of CEB. However, other organizations, including NGOs, can be invited to participate in the work of task forces. The UN-Oceans secretariat is divided into an executing secretariat (IOC/UNESCO) and an organizing secretariat (Division of Ocean Affairs and the Law of the Sea). The first meeting of the inter-agency mechanism was held in Paris in January 2005 and was attended by representatives of CBD, FAO, the International Atomic Energy Agency, IMO, IOC, UNESCO, the International Seabed Authority, the Department of Economic and Social Affairs, the Division of Ocean Affairs and the Law of the Sea, UNDP, UNEP/GPA, WMO, the World Meteorological Organization and the World Bank.

38. In terms of being task-oriented, UN-Oceans has set up four task forces to date, on (a) post-tsunami response; (b) establishing a regular process for global assessment of the marine environment; (c) biodiversity in marine areas beyond national jurisdiction; and (d) the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities.

39. OIOS considers that this recommendation has been implemented.

Recommendation 7
Review of capacity

In implementing its integrated programme on ocean affairs and the law of the sea and in view of the growing demand for technical assistance

from States, the Division should ensure that it maintains its capacity to fulfil its different responsibilities. In reviewing its capacity to implement its integrated programme, the Division should take due account of the specialized expertise that exists throughout the United Nations system. Regarding activities that have been given insufficient attention, such as the dissemination of information on the economic aspects of ocean affairs, the Division should have the capacity to promote more systematically the work done in the United Nations system.

40. The Division reported that, as a way to ensure capacity to fulfil its different responsibilities, it had entered into a partnership with the Nippon Foundation on a project entitled Human Resources Development and Advancement of the Legal Order in the World's Oceans. The project had external funds for a post of project coordinator and for fellowships. To date 10 fellows from the first group selected have completed their fellowship; another 10 fellows selected in November 2005 will start their fellowships in the first half of 2006. Upon completion of the fellowship, fellows should have an advanced awareness and understanding of key issues and best international practices in ocean affairs and are expected to return to their home countries to use their experience to assist in the effective implementation of the United Nations Convention on the Law of the Sea and related instruments and programmes. Fellows should be able to design, implement and/or evaluate specific improvement projects in their home countries related to ocean affairs and the law of the sea, develop a core leadership capacity and have an in-depth understanding of legal frameworks, methodologies and tools to further improve the implementation of instruments and programmes and to provide for their effective enforcement in conformity with international law.

41. Furthermore, the Division requested an Associate Programme Officer from the Associate Experts Programme (see para. 25 above).

42. The Division set up a general trust fund through the Office of Legal Affairs to support capacity and financial resource needs. Norway contributed $44,000 in July 2005, which facilitated the hiring of an expert in fisheries to assist the Division in the preparation of the Secretary-General's report on fisheries. In addition, workshops on the delimitation of the extended continental shelf were conducted in partnership with the Commonwealth Secretariat, the South Pacific Applied Geoscience Commission, the African Union and the Economic Community of West African States.

43. In terms of expertise in the United Nations system, as mentioned in paragraph 37 above, the Division participates actively in UN-Oceans, the inter-agency coordinating mechanism that enhances cooperation throughout the United Nations system to promote the implementation of an integrated programme on ocean affairs and the law of the sea.

44. The Division also requests inputs from the relevant organizations of the United Nations system and others in order to incorporate their expertise and relevant developments that have come about within their mandates. Such information is used to prepare the comprehensive report of the Secretary-General on oceans and the law of the sea and other reports requested by the General Assembly. Inputs received by the Division from various competent organizations in response to its requests for contributions to reports and publications are carefully reviewed and then incorporated in more concise form, given the page limitations applicable for such

reports and publications. In reviewing the contributions, the Division exercises its judgement, on the basis of recent developments and General Assembly resolutions, to identify which contributions relate to high-profile issues.

45. OIOS considers that this recommendation has been implemented.

III. Conclusions

46. Over the past three years considerable progress has been made in addressing most of the problems identified in the in-depth evaluation. The establishment of UN-Oceans has assisted not only the Division but the United Nations system in coordinating and addressing law of the sea and ocean affairs. The Division's partnerships with United Nations and non-United Nations partners such as the Nippon Foundation, the Commonwealth Institute, UNEP and UNITAR, have facilitated (through regional workshops, briefings and the Secretary-General's reports) awareness-raising and the provision of technical expertise to a wide range of Member States.

47. OIOS concludes that the Division for Ocean Affairs and the Law of the Sea has implemented all the recommendations contained in the in-depth evaluation of the programme on the law of the sea and ocean affairs endorsed by the Committee.

(*Signed*) Inga-Britt **Ahlenius**
Under-Secretary-General for Internal Oversight Services
16 March 2006